PUBLIC PROSECUTOR

v.

KRISHNAN RAMAR

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[CRIMINAL TRIAL NO. 1 OF 1984]
15 DECEMBER 1984

CRIMINAL LAW: *Dangerous Drugs - Possession of 237 rolls of cannabis - Whether proved beyond reasonable doubt - Accused a drug addict - Statutory presumption of trafficking - Whether rebutted.*

CRIMINAL LAW AND PROCEDURE: *Cautioned statement - Whether made voluntarily or caused by any inducement, threat or promise - Objection to admission of statement - Trial within trial - Retraction of confession or admission contained in cautioned statement - Confession - Meaning of.*

A police party raided the houses (two) alleged to have been allotted to the wife of the accused and found 237 rolls of the cannabis in the bedroom of the second house. The accused was charged under s. 39B(2) of the Dangerous Drugs Act, 1952 and a cautioned statement was recorded.

There were two vital issues for determination. The first being; in which house or houses were the accused and his family staying at the time of the raid, from among those 8 houses in a row? The issue was crucial because the cannabis was found in the second house. The defence maintained that the second house had always been vacant and used by children for playing games. The other vital issue was, the cautioned statement recorded from the accused. As there was an objection to its admission, a trial within trial was held to determine the voluntariness of the statement. The accused retracted whatever confession or admission contained in the cautioned statement. He said he was made to sign the cautioned statement, the contents of which he did not know.

Held:

[1] Whether the accused had slept in the second house, or not, and in doing so habitually or not, it had been proved beyond reasonable doubt that both the said houses were used in more ways than one by the accused and his family, who had the exclusive right to stay in both houses which had been duly allotted to them.

[2] The cautioned statement was voluntarily made by the accused and it was not caused by any inducement, threat or promise of any kind. Cautioned statement admitted.

[3] The defence had not rebutted the presumption that the accused was trafficking in cannabis. The prosecution had proved beyond reasonable doubt that the accused was in possession of the cannabis. Therefore the statutory presumption of trafficking was invoked.

[Accused found guilty and was convicted and sentenced to death by hanging.]

Cases referred to:

R.v. Baskerville [1916] 2 KB 658
Toh Ah Low & Anor. v. Rex [1949] MLJ 54

Legislation referred to:
Criminal Procedure Code, ss. 113, 115
Dangerous Drugs Act 1952 s. 39B(2)
Evidence Act 1950, s. 17(2)

For the public prosecutor - Mohd. Zaki Md. Yasin, DPP
For the accused - Ramasamy; M/s. Mahadevi Ganeshmurugan & Co.

JUDGMENT

Peh Swee Chin J:

The accused was charged for an offence under s. 39 B(2) of the Dangerous Drugs Act, 1952 and was convicted and sentenced to death at the end of the trial.

The facts adduced by the prosecution witnesses can be safely typified by the evidence of PW1, (Inspector Mohd Daud), who led a police party of 12 police personnel, acting on information received, and raided some labourers' quarters of Lee Leong Estate at the 10th m.s. Kepis, Dangi, Kuala Pilah. The labourers' quarters consisted of a row of 8 separate but contiguous and adjoining units of accommodation or 8 houses. On arrival, PW1 saw one male Indian in front of one of the houses, and on seeing the police party, that man ran into the house. PW1 and four others gave chase and apparently stopped the man in his tracks. PW1 revealed his identity and found that man to be the accused in this case. In the bedroom of the house and under a wooden platform about 3" to 4" high, he recovered 237 packets or rolls of a substance which was later proved to be ganja or cannabis by PW5 (the chemist). PW1 called for the photographs to be taken, *inter alia*, of the place where the incriminating items were found, by PW2, police photographer. The accused took PW 1 to a small cultivated plot of land where he pointed out to PW1, four plants suspected to be those of cannabis and a container containing substance suspected to be also cannabis, and photographs were similarly taken of these. PW1 lodged a report, kept the items recovered in his iron safe until he handed them to the investigating officer (hereinafter called IO), i.e., one Inspector Annuar. When the accused was first seen running away, he was found carrying 3 white plastic paper bags containing foodstuff. In the house were found the mother of the accused i.e., DW3, (Periamah aged 80), wife of the accused DW2, (Murugamah), aged 33; eldest son of the accused, DW5 (Bathumalai) aged 17; the second son of the accused DW4 (Kannan) aged 12; and other children.

One of the crucial and highly controversial issues was, in which house or houses were the accused and his family staying at the time of the raid, from among those 8 houses in a row? As one faced their front doors, the defence strongly maintained that it was only the first house from the left, i.e. not both the first **AND** the second houses from the left as contended by the prosecution. The issue was crucial because the cannabis was found in the second house from the left.

On this issue, the prosecution called PW10, (Tan Sapiah Yei), the kepala of the said Lee Leong Estate, who drew a rough sketch, (P10), to show in effect that the first two houses from the left in the manner stated, were allotted to Murugamah, wife of the accused, who was a rubber tapper employed in the estate. According to PW1, the IO (who went there subsequently after the raid) and PW3, there was a connecting door between the said first house and the said second house. Photographs showed that some kitchen utensils were found on the wooden platform under which the said 237 rolls of cannabis were found in the said second house. The prosecution called PW 8, (Sivarajah), a neighbour of the accused and he stated he was staying with his father (PW9) in the house on the extreme left as one faced the row of the houses and there were about 7 houses in the row. He however identified

the photograph (P2A) as showing the accused's house, which was the "end" (last) house, undoubtedly on the other end of the row of the houses. He said,in effect that the said second house as shown in the photographs produced by the prosecution had always been vacant and used by children for playing games and that the door of the second house was always open. This witness was contradicted by the evidence of his own father (PW9), (Raman), on material points in that as one faced the row of houses, PW9 said that his own house was on the extreme right, and that there were 8 houses, instead of about 7 houses as stated by PW8. PW9 said in effect that the accused was staying on the other end of the row of houses. The said second house, PW9 said, was found sometimes closed, and sometimes open and he had seen people staying there. PW9 said that the accused's house was the said first house. The accused, PW9 said, had also asked for another house in addition to the said first house, but he did not get it. It is convenient here to mention that the accused, his wife, his mother and children gave evidence to the effect that the said second house was vacant and that they were not staying there. Only children, they said, used the said second house for playing (games). The wife of the accused, DW2, said in evidence-in-chief, that it was true that she had asked the kepala (PW10) for one more house in addition to the said first house and was allotted the said second house but the said second house was in a bad shape and broken-down condition and was therefore not used by the family for staying in, and that the pots and pans as shown in the photographs tendered in evidence, were not hers.

I accept the evidence of the kepala (PW10) that both the first and second houses on the left - as one faced the front of the row of 8 houses were allotted to the wife of the accused who was, of course, staying with his wife and children, the wife being a tapper employed at the said Lee Leong Estate. I accepted and found as a fact that there was a connecting door or at the very least, an opening between the said first house and the said second house and that the accused and his family were making use of the said second house, at least, either as a kitchen or for storing pots and pans and as a play-room for children of the accused though they were chided by the accused for having messed it up. Whether the accused had slept in the said second house, or not, and in doing so habitually or not, would not, in my view, count for much for it had been proved beyond any reasonable doubt that both the houses aforesaid were used in more ways than one by the accused and his family who had the exclusive right to stay in both the houses which had been duly allotted to them by the estate management.

Another vital issue was the cautioned statement recorded from the accused by PW11, (ASP Arumugam). Objection to its admission was raised by learned defence Counsel and a trial within a trial was held. The statement was recorded on 13 November 1983 at 10.25 a.m. under s. 113 of the Criminal Procedure Code; in this connection, the accused having been arrested on 3 November 1983. The accused was not handcuffed when he was brought in to PW11 who spoke to the accused in Tamil, the mother tongue of both the accused and PW11 who administered the caution to him. The recording took about 2½ hours. He asked the accused whether he had anything to add to the statement after it was read to him and the accused answered in the negative and signed. It was common ground that the accused answered in the negative and signed. It was common ground that the accused was never assaulted and that no police officer had seen and questioned him since his arrest until PW11 saw him and recorded it, and that he was given enough food and drinks. PW11 was cross-examined, and he denied having told the accused that if the accused gave the statement, the accused would only receive 2 or 3 months' imprisonment. PW11 said that he was in charge of operations and investigations of the anti-narcotics branch. PW11 said he found no marks on the body of the accused.

The accused in his evidence in the trial within the trial, denied having told PW11 that he was involved in any drugs at all. Indirectly but very clearly, the accused retracted whatever confession or admission contained in the cautioned statement, if such confession or admission was made in it in regard to the cannabis seized by PW1 from the second house. The accused in effect said that he did not know the contents of the cautioned statement which he said, he was 'made' to sign.

I was satisfied beyond any reasonable doubt after further hearing Counsel's submissions that the cautioned statement was voluntarily made by the accused; in the sense that the making of the cautioned statement was not caused by any inducement, threat or promise of any kind so that by making it, the accused would gain any advantage or avoid any evil of a temporal nature in reference to the offence for which he was arrested and charged. I found nothing in the circumstances to suggest any oppression of the accused, even in any subtle way. I admitted the cautioned statement (P11).

Having admitted it in evidence, it is pertinent to refer to its contents. The accused would appear to have made a very full and complete confession of everything in connection with the charge against him, for example, as to how and from where he obtained the seedlings of cannabis plants, how he planted them, harvested and packed them in rolls and sold them leaving about 250 rolls which he kept under the wooden platform or floorboard. I pause here to observe that PW1 had recovered 237 rolls, but having regard to both the number of rolls kept under the wooden platform as presumably estimated by the accused and the number of rolls recovered by PW1, both being sizeable in quantity, the difference between them, though not negligible but not great, became rather insignificant and had very little, if any, adverse effect on the evidence of PW1, which I accepted.

The word "confession", in our law of evidence, is not solely confined to those judicial confessions, e.g. the ones made to magistrate under s. 115 of the Criminal Procedure Code but it includes extra-judicial confessions like those made in cautioned statements under s. 113 of the Criminal Procedure Code. Thus, s. 17(2) of the Evidence Act defines a confession as an admission made at any time by a person accused of an offence, stating or suggesting that he committed the offence.

As a general rule, in my view, a confession or a cautioned statement when it contains such a confession, can be treated as substantive evidence against the maker himself and is sufficient to found a conviction, should it be unhesitatingly accepted by the Court, without any necessity for corroboration from independent testimony, even when it is subsequently retracted and disowned, so long as the Court cautions itself of the fact of such retraction. A confession which implicates another person or a co-accused is on a different footing and is not to be regarded, of course, as substantive evidence against such other person or the co-accused.

When such a confession is retracted, and there are other circumstances which alert the Court to its credibility, then it would be unsafe to act on such a confession without calling for corroboration from independent testimony in the same way an accomplice's evidence requires to be corroborated.

In the instant case, not only the confession contained in the cautioned statement was retracted by the accused; the cautioned statement was made to a police officer who happened to be a senior investigation officer of the anti-narcotics branch of the Negeri Sembilan police, a superior officer of PW1. It ought to have been made to another police officer from another branch or division of the police to avoid at least the danger of the recording officer in this

case becoming over-zealous. There were discrepancies in the prosecution evidence which, however, were minor and insignificant, such as the mistake about PW1 having seen the IO mark the exhibits handed to the latter. I had decided therefore it would be unsafe or unwise to accept as true the contents of the cautioned statement without corroboration.

Corroboration, in my view, means confirmation of two material particulars, viz., the *actus reus* and identity of the accused in question by evidence of a material circumstance from an independent source e.g. not emanating from the accused or his accomplice. This, I believe, is the ratio of the *locus classicus*, viz. the case of *R.v. Baskerville* [1916] 2 KB 658, in which, a letter written by the accused to one of the boys alleged to have been sexually molested was held to be sufficient corroboration even though the contents of the letter were capable of innocent construction.

In the instant case, there was abundant evidence of material circumstances, dehors the cautioned statement, which confirmed the contents of the cautioned statement. The accused was undoubtedly staying with his wife and children, neither could it be denied that the wife was allotted the first and second houses from the left as one faced the front of the row of eight houses. There was evidence which I accepted of an opening or connecting door between the said first and second houses. The accused and his family were using also the second house at least for storing kitchen utensils there, for example, and the incriminating exhibits were recovered from under the wooden platform of the said second house.

The material circumstances enumerated above, supplied the necessary confirmation on the question of the identity of the accused, as well as the *actus reus* of the accused, and thus the contents of the cautioned statement, or more specifically, the confession therein, was corroborated by independent testimony. It therefore follows that the prosecution had proved beyond a reasonable doubt that the accused was in possession of the cannabis found by PW 1 and his police party within the meaning of the word, as elaborated in the leading case of *Toh Ah Low & Anor. v. Rex* [1949] MLJ 54. The defence evidence and it will not be necessary to set it out here, had not raised a reasonable doubt on such possession.

Applying the statutory presumption of trafficking arising out of possession of the cannabis being 200 grammes and more in weight, the rebuttable presumption arose against the accused that he was trafficking in the cannabis found by the police. The defence evidence from the accused and members of his family, had not rebutted such presumption, on a balance of probabilities by showing that he was not trafficking in the cannabis found. The Court had taken into consideration that he was an addict so that he might possibly be the sole consumer of the 237 rolls of the cannabis but the Court had come to the conclusion that this possibility was belied by the scarce financial resources of an ordinary rubber tapper whom the accused was said to be one, and it could not rebut the presumption of trafficking, especially from the comparatively large quantity of the cannabis recovered in this case. The work of such rebuttal was rendered even more difficult by that part of the cautioned statement of the accused to the effect that the cannabis found by PW1 represented the unsold balance of cannabis harvested earlier.

Apart from the statutory presumption of trafficking which I invoked, I had not applied any other statutory presumption, as it was neither necessary nor appropriate to do so. I ought to mention also that had the cautioned statement of the accused in this case been excluded from the evidence, the evidence without the cautioned statement, might or might not possibly have led to a benefit of doubt being accorded to the accused, but it was not necessary to decide such a hypothetical position as the Court was of the view also that only some evidence

of material circumstances extraneous to the cautioned statement would be sufficient for the purpose of corroborating the confession contained in the cautioned statement, and that such corroborative evidence so used, need not, by itself, have inevitably established a case beyond a reasonable doubt against the accused or otherwise justified a conviction. Please see again the case of *R. v. Baskerville* (*supra*). Were it otherwise, the cautioned statement would of course have been supererogatory for the purpose of the conviction in this case. If such evidence, minus the cautioned statement was by itself sufficient to justify such a conviction, then such evidence together with the cautioned statement would have the effect of making this case even more formidable or unassailable.

In the circumstances, I found the accused guilty and convicted him of the offence as charged and sentenced him to die by hanging.

Also found at [1985] 1 CLJ 108